

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

HARTFORD FIRE INSURANCE  
COMPANY,

Plaintiff,

v.

NBC GENERAL CONTRACTORS  
CORPORATION, a California  
Corporation; MONICA UNG, an  
individual; and DENNIS CHOW,  
an individual,

Defendants.

Case No: C 09-5363 SBA

**ORDER GRANTING  
MOTION TO WITHDRAW**

Docket 117

On November 13, 2009, Hartford Fire Insurance Company (“Hartford”) commenced the instant action against NBC General Contractors Corporation (“NBC”), Monica Ung (“Ung”), and Dennis Chow (“Chow”) (collectively, “Defendants”)<sup>1</sup> alleging claims for breach of indemnity agreement, specific performance, injunctive relief, and *quia timet*. Compl., Dkt. 1. The parties are presently before the Court on McInerney & Dillon, P.C.’s (“McInerney & Dillon”) motion to withdraw as counsel of record for Defendants. Dkt. 117. Hartford does not oppose the motion. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS McInerney & Dillon’s motion, for the reasons stated below. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

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<sup>1</sup> Ung and Chow were officers and/or directors of NBC. Compl. ¶¶ 5-6.

1 **I. DISCUSSION**

2 The Court's Civil Local Rules authorize an attorney to withdraw as counsel of  
3 record if: (1) written notice has been given reasonably in advance to the client and all other  
4 parties in the action; and (2) the attorney obtains leave of Court. Civ. L.R. 11-5(a); see  
5 Darby v. City of Torrance, 810 F.Supp. 275, 276 (C.D. Cal. 1992) (an attorney representing  
6 a client may not withdraw except by leave of court). In addition, the Local Rules provide  
7 that when withdrawal by an attorney from an action is not accompanied by simultaneous  
8 appearance of substitute counsel or agreement of the party to appear pro se, leave to  
9 withdraw may be subject to the condition that papers may continue to be served on counsel  
10 for forwarding purposes, unless and until the client appears by other counsel or pro se. Civ.  
11 L.R. 11-5(b).

12 In this district, the conduct of counsel, including the withdrawal of counsel, is  
13 governed by the standards of professional conduct required of members of the State Bar of  
14 California. Civ. L.R. 11-4(a)(1); see Nehad v. Mukasey, 535 F.3d 962, 970 (9th Cir. 2008)  
15 (applying California Rules of Professional Conduct to attorney withdrawal). The Rules of  
16 Professional Conduct in California allow withdrawal where the client "breaches an  
17 agreement or obligation to [its counsel] as to expenses or fees." California Rules of  
18 Professional Conduct Rule 3-700(C)(1)(f). Withdrawal is also permitted where the client's  
19 conduct "renders it unreasonably difficult for [counsel] to carry out the employment  
20 effectively." California Rules of Professional Conduct Rule 3-700(C)(1)(d). However,  
21 before counsel can withdraw, counsel must comply with California Rule of Professional  
22 Conduct 3-700(A)(2), which provides that counsel shall not withdraw from employment  
23 until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to  
24 the rights of the client, including giving due notice to the client, allowing time for  
25 employment of other counsel, complying with rule 3-700(D) (regarding papers), and  
26 complying with applicable laws and rules. See El Hage v. U.S. Sec. Assocs., Inc., 2007  
27 WL 4328809, at \*1 (N.D. Cal. 2007). The decision to permit counsel to withdraw is within  
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1 the sound discretion of the trial court. See United States v. Carter, 560 F.3d 1107, 1113  
2 (9th Cir. 2009).

3 Here, McInerney & Dillon request leave to withdraw as counsel of record for  
4 Defendants on two grounds: (1) Defendants have failed cooperate and communicate with  
5 counsel regarding this matter since May 2010 despite repeated efforts to contact them; and  
6 (2) Defendants have failed to pay McInerney & Dillon for legal services in the amount of  
7 \$280,000. McGahan Decl. ¶¶ 2-3, 5-7, Dkt. 118. The Court finds that these reasons  
8 support a finding of good cause to grant McInerney & Dillon's motion for leave to  
9 withdraw as counsel of record for Defendants. See U.A. Local 342 Joint Labor–  
10 Management Committee v. South City Refrigeration, Inc., 2010 WL 1293522, at \* 3 (N.D.  
11 Cal. 2010) (client's failure to cooperate or communicate effectively with counsel and  
12 failure to pay attorneys' fees justified granting leave to withdraw). In addition, the Court  
13 finds that McInerney & Dillon have complied with the requirements of Civil Local Rule  
14 11-5(a) by providing notice reasonably in advance to Defendants of its intention to  
15 withdraw. McGahan Supp. Decl. ¶¶ 2-6, 121. Finally, the Court finds that McInerney &  
16 Dillon have taken reasonable steps to avoid reasonably foreseeable prejudice to the rights  
17 of Defendants by attempting to communicate with Ung and Chow on numerous occasions  
18 prior to filing the instant motion, and by mailing the instant motion by certified mail to the  
19 last known address of the Defendants and to NBC's agent for service of process. See  
20 McGahan Decl. ¶¶ 5-6; McGahan Supp. Decl. ¶¶ 2-6. Accordingly, McInerney & Dillon's  
21 motion to withdraw as counsel of record for Defendants is GRANTED.

## 22 **II. CONCLUSION**

23 For the reasons stated above, IT IS HEREBY ORDERED THAT:


24 1. McInerney & Dillon's motion to withdraw as counsel of record for  
25 Defendants is GRANTED. Because McInerney & Dillon's withdrawal is not accompanied  
26 by simultaneous appearance of substitute counsel, the motion is granted on the condition  
27 that all papers continue to be served on McInerney & Dillon for forwarding purposes until a  
28 substitution of counsel is filed. Since corporations may not appear in federal court except

1 by counsel,<sup>2</sup> NBC has thirty (30) days to appear by substitute counsel. If NBC has not filed  
2 a substitution of counsel within thirty (30) days from the date this Order is filed, Hartford  
3 shall move for entry of default.

4 2. This Order terminates Docket 117.

5 IT IS SO ORDERED.

6 Dated: 3/5/2014

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8 SAUNDRA BROWN ARMSTRONG  
9 United States District Judge  
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27 <sup>2</sup> See Civ. L.R. 3-9(b) (“A corporation, unincorporated association, partnership or  
28 other such entity may appear only through a member of the bar of this Court.”); see also  
Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 202  
(1993).